

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Hill Broadcasting Company, Inc.)	Facility ID 27220
)	File Nos. BLCT-19990126KG and BRC DT-
Request for Reinstatement of License and)	20140530ANP
Application for Renewal of License for Station)	
DKTVG-TV, Grand Island, NE)	

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 2015

Released: September 17, 2015

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration an Application for Review filed by the Hill Broadcasting Company, Inc. (“Hill Broadcasting”),¹ former licensee of DKTVG-TV, Grand Island, NE (the “Station”), seeking review of a January 29, 2015 letter decision issued by the Video Division of the Media Bureau (the “Division”) denying Hill Broadcasting’s Petition for Reconsideration and Reinstatement of its license for the Station.² The letter decision affirms the staff’s April 22, 2014 letter cancelling the Station’s license and deleting the Station’s call sign, *inter alia*, pursuant to the automatic license expiration provision of Section 312(g) of the Communications Act of 1934, as amended (“Act”) – a decision that became final after Hill Broadcasting had failed to file a petition for reconsideration within the statutory 30-day period after public notice of the cancellation.³ It also affirms an October 30, 2014 Bureau decision dismissing the Station’s license renewal application because, by then, the Station’s underlying license had been cancelled.⁴ In its Application for Review, Hill Broadcasting contends that not only did the Division err in its April 22 and October 30 letters by ignoring its October 27, 2009 letter tolling the Station’s digital construction permit, but that reinstatement of the license is warranted pursuant to the “equity and fairness” provision of Section 312(g).⁵ For the reasons discussed below, we dismiss and otherwise deny Hill Broadcasting’s Application for Review.

II. BACKGROUND

2. On October 21, 2009, Hill Broadcasting requested that the construction deadline for its digital construction permit for the Station be tolled because the licensee was involved in an ongoing

¹ Application for Review of Hill Broadcasting Company, Inc. (filed Mar. 2, 2015) (“Application for Review”).

² Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Hill Broadcasting Company, Inc. (Jan. 29, 2015) (“January 2015 Decision”).

³ 47 U.S.C. § 405 (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.”). *See also* 47 C.F.R. § 1.106(f).

⁴ *Id.*

⁵ 47 U.S.C. § 312(g) (permitting reinstatement of a license only if “the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness”).

bankruptcy proceeding.⁶ The Division granted the request, concluding that the Station's "licensee is the subject of an ongoing bankruptcy proceeding... and that proceeding has prevented construction of the station's digital facilities," and tolled the construction deadline until six months after the "completion of the bankruptcy proceeding."⁷ On the June 12, 2009 statutory deadline requiring all full power television stations to cease analog operation,⁸ the Station had been granted special temporary authority ("STA") to operate on its pre-transition digital channel (channel 19).⁹ That STA was extended on October 16, 2009 and expired on February 17, 2010.¹⁰ The Station went silent on April 5, 2010.¹¹ On March 21, 2011, nearly a year later, Hill Broadcasting filed for another STA requesting permission for the Station to resume digital operations on its pre-transition digital channel. The STA was granted on September 28, 2011.¹²

3. On April 22, 2014, the Division released the letter noted above cancelling the Station's license and deleting its call sign because the Station had been silent for more than one year, in violation of Section 312(g) of the Act.¹³ That provision provides that the license of a broadcast station that fails to transmit a broadcast signal for any consecutive twelve month period expires automatically at the end of that period. Hill Broadcasting did not file a petition for reconsideration challenging the Bureau's actions within the statutory thirty (30) day filing window. Accordingly, the Division's cancellation of the Station license became final on June 4, 2014.¹⁴

4. On May 30, 2014, Hill Broadcasting filed a license renewal application for the Station¹⁵ in which it confirmed that, as noted by the Division in the April 2014 Decision cancelling the Station's license, during the preceding license term, the Station had been silent for a consecutive twelve month

⁶ The bankruptcy actually involved Pappas Telecasting Companies, with whose subsidiary, Pappas Telecasting of Central Nebraska, L.P. Hill Broadcasting had a local marketing agreement, not the licensee. *See Fant Broadcasting Company of Nebraska and Pappas Telecasting of Central Nebraska et al.*, Memorandum Opinion and Order, 19 FCC Rcd 8229 (2004).

⁷ Letter from Clay C. Pendarvis, Associate Division Chief, Video Division, Media Bureau to William H. Crispin, Esq. (October 27, 2009) ("Tolling Letter"). In fact, as noted in the preceding footnote, Hill Broadcasting was not the subject of the bankruptcy proceeding. Accordingly, contrary to the Bureau's conclusion in the Tolling Letter, the bankruptcy did not prevent Hill Broadcasting from constructing the Station. It chose not to do so. Hill Broadcasting was not entitled to tolling under Section 73.3598(b)(2) of the Rules, and we find that the Bureau's grant of tolling was in error.

⁸ *See* DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009) (DTV Delay Act); 47 U.S.C. § 309 note 3002(b).

⁹ File No. BEDSTA-20090611ABN (granted June 12, 2009; expired December 12, 2009).

¹⁰ File No. BEDSTA-20091014ABE, Ex. 36 (claiming "severe financial hardship").

¹¹ *See* File No. BDSTA-20110321AAC, Ex. 21 (stating that the Station has been silent since April 5, 2010). Pursuant to Section 73.1740 of the Rules a station may remain silent for up to 10 days without Commission authority. If the station is or will be silent for up to 30 days, the Commission must be notified (by letter) that the station is silent. If the station will be or has been silent for more than 30 days, the licensee must request Special Temporary Authority (STA) to remain silent. 47 C.F.R. § 73.1740. Other than the reference in the cited engineering STA request, the Commission has no record that such a notification or STA request was filed.

¹² File No. BDSTA-20110321AAC. The Commission has no record that that the station resumed operation, either upon request of the STA or following grant of the STA, which was not extended and expired on March 28, 2012.

¹³ Broadcast Actions, Report No. 48226, FCC Daily Digest (rel. Apr. 25, 2014). Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Hill Broadcasting Company, Inc. (Apr. 22, 2014) ("April 2014 Decision"). The Division's letter also stated that, because the bankruptcy proceeding had ended, the tolling of the digital construction permit had ceased.

¹⁴ *See* 47 C.F.R. §§ 1.117, 1.106(f); 47 U.S.C. § 405(a).

¹⁵ File No. BRC DT-20140530ANP.

period.¹⁶ On October 30, 2014, the Division dismissed the license renewal application because the license had been cancelled – having expired pursuant to Section 312(g) – and consequently there was no license to be renewed.¹⁷ On December 4, 2014, Hill Broadcasting filed a petition for reconsideration (“Petition”) requesting that the Station’s license, call sign, and license renewal application be reinstated.¹⁸ Hill Broadcasting maintained that the basis for the Division’s action was “factually incorrect” because the bankruptcy proceeding was, in fact, still ongoing and therefore the Bureau’s cancellation of the Station license and call sign was in error.¹⁹ The Division evaluated the information provided in the Petition and determined that, because Hill Broadcasting had failed to file a timely petition for reconsideration of the original license cancellation, that action was final and could not be revisited. The Division went on to find that, regardless of the status of the bankruptcy proceeding, the Station’s license had expired as a matter of law pursuant to Section 312(g) of the Act, thus terminating any related authorizations, including the digital construction permit.²⁰ On March 2, 2015, Hill Broadcasting filed a timely Application for Review.

5. In its Application for Review, Hill Broadcasting raises two arguments in support of its request for reinstatement of the Station’s license, call sign, and renewal application. First, it contends that the Division’s decision was in conflict with its own Tolling Letter because the Pappas bankruptcy proceeding had not yet terminated and that, as long as the bankruptcy proceeding was ongoing, the Station had both its construction permit and its “operational license” tolled.²¹ Second, Hill Broadcasting argues that the Division misapplied Section 312(g) of the Act by failing to “consider the public interest.”²²

III. DISCUSSION

6. The Commission will grant an application for review of a final action taken pursuant to delegated authority when such action, *inter alia*, conflicts with statute, regulation, precedent or established Commission policy; involves application of a precedent or policy that should be overturned or revised; or makes an erroneous finding as to an important or material factual question.²³ For the reasons discussed below, we conclude that Hill Broadcasting has failed to make such a showing in its Application for Review. For the following reasons, we affirm the Division’s cancellation of the license and call sign and its subsequent dismissal of the renewal application.

7. In its January 2015 Decision, the Division correctly concluded that Hill Broadcasting’s Petition and Request for Reinstatement of the April 2014 Decision was grossly untimely and accordingly procedurally barred. The Petition was filed on December 4, 2014, over seven months after the public

¹⁶ *Id.* at Section IV, Question 13.

¹⁷ Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau to Hill Broadcasting Company, Inc. (Oct. 30, 2014) (“October 2014 Decision”); Broadcast Actions, Report No. 48359, FCC Daily Digest (rel. Nov. 4, 2014).

¹⁸ Petition for Reconsideration and Request for Reinstatement of License Renewal filed by Hill Broadcasting Company, Inc. (filed Dec. 4, 2014) (“Petition”).

¹⁹ Petition at p. 1 and Exhibit 1.

²⁰ January Letter Decision at p.2. Under Section 312(g) license expiration occurs “*notwithstanding* any provision, term, or condition of the license to the contrary” (emphasis added). 47 U.S.C. § 312(g).

²¹ Application for Review at 2, paras. 3-4. The Tolling Letter tolled only the construction deadline for the digital construction permit; it was silent as to the underlying license (“we find that the station’s DTV construction deadline should be tolled until completion of the bankruptcy proceeding.”).

²² *Id.* at 2-4, paras. 5-7. We hereby dismiss that portion of the Application for Review pursuant to Section 1.115(c) of the Rules because Hill Broadcasting first raises this argument in its Application for Review and the Bureau thus had no opportunity to rule on it. 47 C.F.R. § 1.115(c).

²³ 47 C.F.R. § 1.115(b)(2).

notice of the April 2014 Decision by which the Station's license and construction permit were cancelled, well beyond the statutory thirty-day filing deadline of May 26, 2014.²⁴ As noted above, Section 405 of the Act²⁵ and Section 1.106(f) of our Rules,²⁶ require petitioners to seek reconsideration no later than thirty days after public notice of the action for which reconsideration is sought.²⁷ The Commission lacks authority to waive or extend the statutory thirty-day filing period for petitions for reconsideration unless the petitioner can show that its failure to file in a timely manner resulted from "extraordinary circumstances indicating that justice would thus be served."²⁸ The Commission does not have authority to waive or extend, even by as little as one day, the statutory thirty-day filing period for petitions for reconsideration, absent extraordinary circumstances. Hill Broadcasting does not allege, much less establish, that such circumstances exist here.²⁹ To the extent the Petition also purported to request reconsideration of the Division's October 2014 Decision and its dismissal of the Station's license renewal application, the Division properly determined that dismissal was warranted because the requested relief could not be granted as there was no longer a valid license authorization to be renewed.

IV. ORDERING CLAUSE

8. ACCORDINGLY, IT IS ORDERED, That, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and sections 1.115(c) and (g) of the Commission's rules, 47 C.F.R. §§ 1.115(c), (g), the Application for Review filed by Hill Broadcasting Company, Inc. IS DISMISSED to the extent noted herein and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁴ As noted at n. 13, *supra*, public notice of the April 2014 Decision was published on April 25, 2014.

²⁵ 47 U.S.C. § 405(a).

²⁶ 47 C.F.R. § 1.106(f)

²⁷ *Christian Family Network, Inc.*, Letter Decision, 24 FCC Rcd 7170, 7173 (Aud. Div. 2009) (30-day petition for reconsideration period applies to cancellation of license).

²⁸ See *Gardner v. FCC*, 530 F.2d 1086, 1091-92 (D.C. Cir. 1976). See also *Virgin Islands Telephone Corporation v. FCC*, 989 F.2d 1231 (D.C. Cir. 1993); *Metromedia, Inc.*, 56 FCC 2d 909 (1975) (distinguishing *Gardner* and finding that the Commission may not waive the thirty day filing period to accept a petition for reconsideration filed one day late); *Ole Brook Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 20644 (2000).

²⁹ As a separate and independent ground for our affirming the Bureau's actions here, as discussed in the January 2015 Decision, we reject Hill Broadcasting's argument that its license remained in effect as a result of the bankruptcy proceeding of Pappas Broadcasting, with which it had entered into an LMA. The status of the bankruptcy proceeding or whether the Station's construction permit continued to be tolled is immaterial. Section 312(g) of the Act states that license expiration occurs "notwithstanding any provision, term, or condition of the license to the contrary" (emphasis added). The tolling of a construction permit only extends the time period for construction of the station and has no effect on a Station's license or the need to "transmit a broadcast signal" in order to prevent expiration of that license under Section 312(g). Hill Broadcasting acknowledged its awareness of this requirement and the need for the Station to be operating, notwithstanding the Tolling Letter, when it requested a STA in March 2011, "so that the underlying license does not expire as a matter of law pursuant to Section 312(g) of the Communications Act." See File No. BDSTA-20110321AAC, Ex. 21. In short, the Bureau's tolling of the construction permit does not override the Congressional mandate that, absent considerations of "equity and fairness," the license for a station that fails to transmit a broadcast signal for twelve consecutive months expires as a matter of law. Because Hill Broadcasting failed to raise the issue whether it was entitled to the "equity and fairness" exception before the Bureau, it is barred from raising it here. See note 22, *supra*.